If, as this Court held in *Servette*, "producer" as used in the proviso is broad enough to include a wholesaler, it is also broad enough to include a television station which furnishes advertising services; the station, indeed, is if anything more akin to a conventional producer than a distributor is, albeit the station's "products" are intangible. Under the reasoning of *Servette*, the proviso must be this broad. The prohibition of Section 8(b)(4)(B) against certain secondary boycotts extends to boycotts of television stations or other suppliers of intangible services.* Therefore, if publicity against such suppliers is not within the proviso, the proviso is "narrower in coverage than the prohibition to which it is an exception"—a reading rejected by this Court in *Servette*. Furthermore, this Court has explained that the publicity proviso of Section 8(b)(4)(B) was added to dispel the serious First Amendment questions that would have been raised by a prohibition against union efforts to enlist public support in a dispute with an employer. *National Labor Relations Board* v. *Fruit & Vegetable Packers (Tree Fruits)*, 377

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* See, *e.g.*, *National Labor Relations Board* v. *Associated Musicians (Gotham Broadcasting Corp.)*, 226 F. 2d 900 (C.A. 2), certiorari denied, 351 U.S. 962; *Teamsters, Local 901 ("Editorial Imparcial")*, 134 N.L.R.B. 895, 901, Section 10(*l*) injunction sustained on appeal, *Local 901, Teamsters* v. *Compton*, 291 F. 2d 703 (C.A. 1); *Local Union 154, Int'l Typographical Union (Ypsilanti Press)*, 135 N.L.R.B. 991, 996.

U.S. 58, 63–70. These questions would persist if a dispute with a supplier of services was excluded from the proviso,[7] and the publicity that the unions engaged in here was therefore forbidden.

[7] This we think answers petitioner's contention (Pet. 11–13) that *Servette* can properly be limited to its facts, *i.e.*, the distribution of a tangible product; such a limitation would be inconsistent with this Court's reasoning. Nor is it material that the Court bolstered its conclusion in that case by reference (at 377 U.S. 55–56) to cases where wholesaling had been held to constitute "production" under the Fair Labor Standards Act, 29 U.S.C. 203(j). The Court relied on the FLSA merely by way of analogy; it did not suggest that the meaning given to the terms used in that earlier and different statute reflected Congress' purpose in enacting the 1959 proviso to the NLRA. If FLSA precedents be relevant here, we point out that employees engaged in a wide variety of service operations have been held to be engaged in the production (or in work necessary to the production) of goods for commerce within the meaning of the FLSA. See, *e.g.*, *Kirschbaum Co.* v. *Walling*, 316 U.S. 517 (employees engaged in maintenance of loft buildings, the tenants of which were engaged in the production of goods for commerce); *Bozant* v. *Bank of New York*, 156 F. 2d 787 (C.A. 2) (maintenance employees in bank building); *Union National Bank of Little Rock* v. *Durkin*, 207 F. 2d 848 (C.A. 8) (maintenance employees in bank building); *Goldstein* v. *Dabanian*, 291 F. 2d 208 (C.A. 3) (employees of check cashing service); *Public Bldg. Authority of Birmingham* v. *Goldberg*, 298 F. 2d 367 (C.A. 5) (maintenance employees employed by a private contractor managing a building housing federal employees engaged in processing social security claims from a multi-state area); *Mitchell* v. *Dooley Bros., Inc.*, 286 F. 2d 40 (C.A. 1) (employees of independent contractors providing cleaning and garbage removal services to businesses engaged in commerce or in the production of goods for commerce).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

ARNOLD ORDMAN,
General Counsel,
DOMINICK L. MANOLI,
Associate General Counsel,
NORTON J. COME,
Assistant General Counsel,
National Labor Relations Board.

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